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6 Attorneys for Plaintiffs

and

8 UNITED STATES DISTRICT COURT
9
10 NORTHERN DISTRICT OF CALIFORNIA

11 [REDACTED] and [REDACTED]
[REDACTED],
12 Plaintiffs,
13
14 vs.
15 INTERSEC INTERACTIVE, INC., and
DOES 1-25,
16 Defendants,

Case No. 15-CV-01145-JST

**DECLARATION OF [REDACTED]
IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS AND/OR
TRANSFER VENUE**

Filed: March 11, 2015

17
18 I, [REDACTED], declare as follows:

- 19 1. The following facts are based on my personal knowledge, and, if called to testify, I
20 would affirm them.
- 21 2. I worked for Defendant Intersec as a producer of adult content and occasionally as
22 an erotic performer from October 2011 through October 19, 2014.
- 23 3. Throughout my employment with Defendant, I was a resident of the State of
24 California in the San Francisco Bay Area.

[REDACTED] DECLARATION

- 1 4. I performed over ninety percent of my work for Defendant in Oakland California.
- 2 5. During the course of a year, I spent only two to three weeks during the summer at
- 3 Intersec's owner, [REDACTED]'s, residence in upstate New York.
- 4 6. Throughout my employment with Defendant, Defendant's only office was in Oakland
- 5 California.
- 6 7. I currently reside in Oakland California.
- 7 8. Throughout my employment with Defendant, [REDACTED]'s primary residence, in which he
- 8 spent nine months out of the year from October to June, is in Emeryville California. I
- 9 know this because I worked extensively with [REDACTED] during my employment with
- 10 Defendant, [REDACTED] told me on numerous occasions where he lived, and I attended
- 11 social and work events at his residence approximately once a week.
- 12 9. General Manager Daniel Intraub's only residence is in San Leandro California. I
- 13 know this because I worked extensively with Intraub during my employment with
- 14 Defendant. On numerous occasions, I heard directly or indirectly from both Intraub
- 15 and his wife [REDACTED] that they live in San Leandro California.
- 16 10. I have limited means and cannot afford to litigate across the country in New York. I
- 17 am currently unemployed. Since Defendant classified me as an independent
- 18 contractor and terminated me, I have been unable to collect unemployment
- 19 insurance. I am living off of my savings, which is almost exhausted. I cannot afford
- 20 to fly back and forth to New York and pay for meals and lodging several times. The
- 21 only reason I was able to bring this action at all was because my attorney agreed to
- 22 take my case on a contingent-fee basis.
- 23 11. Throughout my tenure with Defendant, I was expected to be physically present in the
- 24 Oakland office at a specific time every day during the workweek. I was expected to

1 work at least forty hours per week. I was required to obtain Defendant's approval
2 prior to taking any vacations or other time off of work. I used Defendant's tools—for
3 example, office space, cameras, computers, software, props, and other office
4 supplies. My employment with Defendant was open-ended, but I could be
5 terminated at will, without prior notice, and without cause. Indeed Defendant
6 terminated me without prior notice. I was paid on an hourly basis rather than on a
7 project basis. Though I worked on an occasional side project, I was not engaged in
8 my own distinct occupation or business; I worked primarily for Defendant. The work
9 I performed for Defendant was part of Defendant's regular business—namely,
10 production of erotic media.

11 12. I am included on Defendant's Organizational Chart under my stage name Elise
12 Graves. A true and correct copy of the Organizational Chart is attached hereto as
13 Exhibit 1.

14 13. About a year into my employment with Defendant, Defendant demanded that I sign
15 the Independent Contractor Agreement ("ICA"), which is attached as Exhibit A to the
16 declarations of [REDACTED] and Intraub. Defendant conditioned my continued employment
17 on my signing the agreement and proffered the agreement on a take-it-or-leave-it,
18 non-negotiable basis.

19 14. The essence of my work-related duties at the time of my signing the ICA were
20 specified in section 7 of the ICA. However, after about a year later, in March of
21 2014, Defendant expanded my duties beyond the scope of the ICA. In March 2014,
22 [REDACTED] assigned me to be the Site Manager for Defendant's "Topgrl" site
23 (www.topgrl.com), which was a significant increase in responsibility beyond the
24 scope of duties outlined in the ICA. In consideration for my new role with the Topgrl

1 site, [REDACTED] agreed to pay me ten percent of the sales from the site. The ICA was not
2 amended to include this new scope of work or compensation scheme, nor was any
3 additional contract signed to that effect.

4 15. By the time I was terminated in October 2014, my duties had evolved even further. I
5 was no longer assisting [REDACTED], no longer post-producing Sexually Broken,
6 and only periodically recording video for Sexually Broken, all in contrast to the scope
7 of work stated in the ICA. At that point, I spent most of my time between managing
8 the Topgrl site, doing post-production work for Topgrl, and shooting video for
9 Defendant's "Hardtied" site (www.hardtied.com), among various other tasks not
10 mentioned in the ICA.

11 16. Section 3 of the of the ICA provides that both parties "will mutually agree on the
12 schedule that work is to be completed by." In reality, however, Defendant told me
13 what my schedule would be and when my work was due.

14 17. Section 8 states that I could perform services wherever I wanted, but, in reality,
15 Defendant required me to work at the Oakland office. It was only after I was put in
16 charge of the Topgrl site that she was able to do some editing work from home with
17 the company-provided laptop and editing software, though I was still expected to
18 work primarily in the office and did so.

19 18. Section 14 provides that I could only be terminated with thirty-days' notice. Yet,
20 [REDACTED] terminated my employment without prior notice on October 19, 2014.

21 19. Throughout my employment with Defendant, I regularly worked more than eight
22 hours per day and forty hours per week for Defendant. However, Defendant
23 instructed me and other staff to submit timesheets with a maximum number of pre-
24 determined hours and days that Defendant would pay us. In my case, up until May

1 2014, Defendant would only compensate me for a maximum of eight hours per day.
2 So, during that timeframe, even if I worked more than eight hours in a day, I would
3 simply indicate eight hours on my timesheet for that day. After May 2014, Defendant
4 allowed me to report more than eight hours per day. But, since Defendant classified
5 me as an independent contractor, Defendant still failed to pay me overtime
6 compensation for hours worked over eight per day.

7 20. In early October 2014 at a Japanese restaurant in upstate New York called TUNA,
8 Intraub told me that he was in a sexual relationship with a minor. Intraub stated that
9 the minor's parents had discovered their relationship and prohibited the minor from
10 further interaction with Intraub. He further revealed that he had insisted on
11 continuing the relationship and that he had already gone to visit the minor in person
12 in New York City.

13 21. I then filed a complaint online with the FBI regarding Intraub's pedophiliac activity.
14 Additionally, I brought the issue to [REDACTED]'s attention on October 17, 2014 and told
15 [REDACTED] that I had filed a complaint with the FBI. [REDACTED] told me, "This is definitely a
16 problem," and he indicated that he would speak with his attorney about the situation.

17 22. This was not the first time that I had complained to [REDACTED] about Intraub's sexual
18 impropriety. I had previously complained to [REDACTED] several times about Intraub taking
19 non-consensual photographs of other employees' privates while at work. I also
20 complained to [REDACTED] about the fact that Intraub had installed cameras and
21 microphones throughout the workplace, including the bathroom. Yet, to my
22 knowledge, [REDACTED] failed to take any action to remedy these clearly inappropriate
23 circumstances.

24 23. The same was true with respect to my complaint of Intraub's pedophiliac activity. To

1 my knowledge, [REDACTED] did nothing to address the pedophilia issue. Instead, [REDACTED]
2 sent out an email on October 19, 2014 explicitly condemning me for even raising the
3 issue. Attached as Exhibit 2 is a true and correct copy of that email. In the same
4 email, [REDACTED] terminated my employment. In fact, [REDACTED] terminated everyone's
5 employment and required everyone to interview with Intraub in order to maintain
6 their jobs. Thus, given the circumstances—namely that I had complained about
7 Intraub being a pedophile, and [REDACTED] condemned me for that [REDACTED] effectively
8 singled me out for termination.

9
10 Sworn under penalty of perjury under the laws of the State of California this 16th day of
11 April, 2015.

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[REDACTED] DECLARATION

1 my knowledge, [REDACTED] did nothing to address the pedophilia issue. Instead, [REDACTED]
2 sent out an email on October 19, 2014 explicitly condemning me for even raising the
3 issue. Attached as Exhibit 2 is a true and correct copy of that email. In the same
4 email, [REDACTED] terminated my employment. In fact, [REDACTED] terminated everyone's
5 employment and required everyone to interview with Intraub in order to maintain
6 their jobs. Thus, given the circumstances—namely that I had complained about
7 Intraub being a pedophile, and [REDACTED] condemned me for that—[REDACTED] effectively
8 singled me out for termination.

9
10 Sworn under penalty of perjury under the laws of the State of California this 16th day of
11 April, 2015.

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
[REDACTED] DECLARATION

EXHIBIT 1

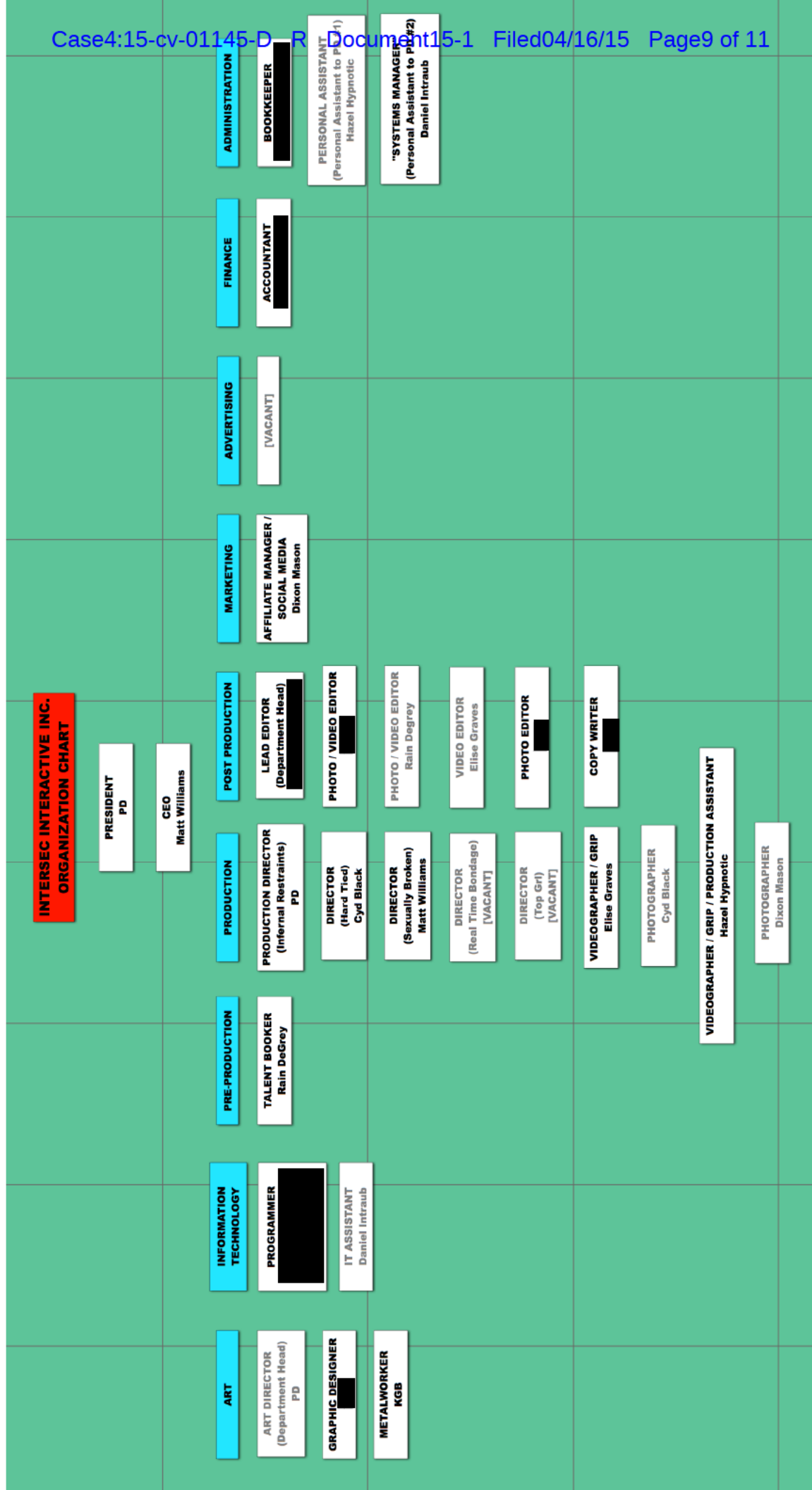
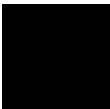


EXHIBIT 2

From: [REDACTED]
Subject: Fwd: [staff] the Freak Show
Date: November 3, 2014 at 4:28 PM
To: David Lipps DLipps@hoyerlaw.com



Begin forwarded message:

From: Elise [REDACTED]
Date: October 19, 2014 at 8:40:40 PM PDT
To: [REDACTED]
Subject: Fwd: [staff] the Freak Show

Begin forwarded message:

From: PD [REDACTED]
Date: October 19, 2014 at 3:54:23 PM PDT
To: staff [REDACTED] Karen Tynan [REDACTED]
Subject: [staff] the Freak Show
Reply-To: PD [REDACTED]

I hope everyone watches this amazing production: episode 1 of season 4.

Soon after my arrival back to Oakland I had a surprise meeting with Elise and Jack regarding the future of the company. They were very concerned that we have a "pedophile" in our midst in the name of Daniel. Elise related a story that Daniel shared with her about his own "Catfish" (a show on MTV) moment about a girl who misrepresented her age to him on the internet. She also suggested that he regularly trolls the internet for these encounters and thus presents a clear and present danger to all of us. In the spirit of these concerns she further related that she has contacted the FBI.

I have contacted our attorney and have a meeting with her on Tuesday.

Needless to say I have not slept or eaten much. And certainly cannot concentrate on the art that was the love of my life. Indeed, an internecine miasma has permeated our affair for the past two years. This brings me to the next condition: my own responsibility in how we have come to this. I believe I have made exceedingly bad judgements in allowing people who have no experience, loyalty, veracity, conscientiousness, or time (un-vetted) to have my ear. I believe the ability to assess strangers and their character is an important requisite of leadership. I am naively trusting (an aspect of aging I have read), or there is no fool like an old fool. Regardless, I am now taking definitive steps to remedy this progressing condition.

One of my final acts in my current capacity: all contracts are terminated. Please contact Daniel for interviews.

Who will answer any questions? It is simple and beautiful — I cannot change the fact that Daniel has had my back for eight years and has helped guide this business forward. In my trembling state I turn to him.

See you tomorrow at the meeting.

Sincerely
pd

ps. This correspondence is confidential.